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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington D.C.

In the Matter of

Implementation of Section 309(j) of the Communications Act Competitive Bidding

PP Docket No. 93-253

To: The Commission

Comments

Point Communications Company ("Point") hereby submits its comments on the Notice of Proposed Rulemaking released on October 12, 1993 ("Notice") in this proceeding.

Point is the licensee of Cellular System KNKN 231 in the Oregon-4 Rural Service Area. Point's system was among the first, if not the first, of the independently operated nonwireline cellular systems to go on the air in the rural service areas. Point has successfully operated its system on a standalone basis for over three years. These comments are coming from the perspective of an experienced small communications business which intends to expand its service to the public through competitive bidding for PCS frequencies and other facilities.

It is crucial to small business that the form of bidding be fair on its face and accessible by legitimate small communications companies, and not confined to the publicly held giants of the industry. The form of bidding should avoid any bias toward the award of PCS frequencies on a nationwide or MTA regional basis, as opposed to the smaller BTA service areas. To achieve these principles, the proposals in the Notice require some modification.

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The bidding for the "Big" PCS frequency blocks should not simply allow combinatorial bidding for a nationwide license, but should also allow bidding for the component BTA's in each MTA for these blocks. Many RSA carriers are precluded from bidding for their surrounding MTA due to the population coverage exclusion, but if they do not overlap significantly into the core BTA of the MTA, they could bid on the BTA if bidding at the BTA level is permitted. These experienced carriers should not be unnecessarily excluded from bidding for service on the "Big" PCS blocks to the key cities they do not presently cover in their regions. This can be accomplished by providing sealed bids at the nationwide and MTA levels for these PCS blocks, with oral bidding for the individual BTA markets comprising the MTA.

Second round bidding should not be employed for facilities subjected to combinatorial bidding. The bidders for the combined license, as a single entities, will have an enormous advantage over the winning group of bidders for the component licenses. By having only one round of bidding, the bidders for the combined license who submit sealed bids will be forced to submit their best bids simply due to the threat that the oral auctions for the component licenses could aggregate to a high price. Allowing a second round would permit the bidders for the combined licenses to relax their offered prices, confident in knowing that they would always have a second chance against a group which is likely to be internally divided. Furthermore, having a second round would effectively preclude a bidder from making a bid for both the combined license and the component license. Otherwise, the bidder could become both the highest bidder for the combined license and a member of the group of highest bidders for the component licenses. This would infect the entire process,

and could be used as a strategy by the major publicly held companies to disadvantage the small business bidders for component licenses.

Electronic bidding and sealed second-bid procedures are impractical for the Commission's spectrum auctions. Those procedures are useful in the treasury securities market where the items being auctioned are fungible and vast in number. Those characteristics do not generally apply to spectrum licenses, which are typically quite different in terms of value, based on variation among individual markets and vast differences, in the PCS contest, in the need to relocate incumbent users. The facilities for electronic bidding may also be inaccessible to all but the most sophisticated corporations, which would discourage participation by small business.

Qualifications to be a "Designated Entity" should require that majority control and equity be held by the entities enumerated in the statute, free of any options to acquire majority control by nonqualified entities, and free of any significant supermajority consent requirements in their governing agreements, charters, articles, or bylaws. Otherwise, the Commission would be laying the foundation for "strawman" applicants who are fronts for nonqualified persons and entities. This sort of application fraud has been a continuing problem for the Commission over the years, and has greatly delayed service to the public in many instances. The Commission should not repeat the mistake here.

To truly encourage the participation of legitimate small business and other "Designated Entities" in the spectrum auctions, the Commission must address the key problem they face -- lack of access to huge amounts of capital. To do that, the financial and penalty terms contemplated in the Notice will need to be greatly relaxed. The upfront fee of

two cents per megahertz per pop is far too high for small businesses and disadvantaged people to put up without turning to surreptitious deals with deep pocket nonqualified backers. One tenth of a cent per megahertz per pop would be a far more realistic requirement, if the Commission truly wants to encourage diversity of ownership. Upfront payments should bear interest, should not be due until just prior to the auction, and should be repaid immediately after the auction to unsuccessful bidders to avoid tying up capital that is typically needed elsewhere by small businesses and disadvantaged individuals. The Commission also needs to clarify the term over which payment would be made, and for this Point suggests a term of at least ten years, with a three year moratorium on principal repayments (but no moratorium on interest payments). This moratorium arrangement mirrors many of the financing arrangements made in the cellular industry. The Commission also needs to relax its proposed automatic cancellation of the license in the event of a payment default. There should be a reasonable opportunity to cure the default and discretion provided to the Commission's staff to negotiate "workout" arrangements in the quite likely event that the spectrum turns out not to be as profitable as anticipated.

In the Notice, the Commission appears to be hanging on to many of the application form concepts, such as "letter perfect" application forms and long form technical proposals, that have no relevance to an auction of the spectrum. For PCS and cellular type authorizations, which are "filled in" with technical facilities over time throughout a geographical area, there is no need whatsoever for any technical proposal. Only the bare information about the ownership of the applicant should be required prior to the auction.

The Commission can rely on construction completion notifications (such as Form 489) to provide the necessary technical information later as the systems are built.

There should be no auctions for intermediate links, such as point-to-point microwave facilities employed by cellular carriers or PCS carriers. These types of facilities are never subject to mutually exclusive applications due to application coordination. Setting up an auction process would needlessly subject existing carriers to "greenmail" applications by entities looking for a quick payoff. The public interest in the rapid and efficient deployment of service in this instance should greatly outweigh the desire to raise money for the government.

Respectfully submitted,

Point Communications Company

John Hearne, Chairman

Dated: November 10, 1993

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